



## **Agricultural Marketing Service**

### **7 CFR Part 1205**

**[Doc. No. AMS-CN-20-0097]**

#### **Cotton Research and Promotion Program: Procedures for Conduct of Sign-up Period**

**AGENCY:** Agricultural Marketing Service (AMS), Department of Agriculture (USDA).

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments update various dates, name changes, addresses, and make other administrative changes.

**DATES:** This direct rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action or notice, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS-CN-20-0097, may be submitted electronically through the *Federal eRulemaking Portal* at <http://www.regulations.gov>. Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery* to Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this document may be found at: [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; telephone (540) 361-2726, facsimile (540) 361-1199, or email at [CottonRP@usda.gov](mailto:CottonRP@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The 1991 amendments to the Cotton Research and Promotion Order (7 CFR part 1205) were implemented following the July 1991 referendum. The amendments were provided for in the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) amendments of 1990. These amendments provided for: (1) importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from \$200,000 to \$300,000; (4) reimbursing government agencies that assist

in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On December 18, 2020, USDA issued a determination based on its review (85 FR 82426) not to conduct a referendum regarding the 1991 amendments to the Order; however, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. Furthermore, the Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order.

Pursuant to section 8(c) of the Act, USDA will provide all eligible Upland cotton producers and importers of cotton and cotton-containing products an opportunity to sign up and request a continuance referendum regarding the 1991 amendments to the Order. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county Farm Service Agency (FSA) office where their farm is located. If a producer's land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers may alternatively request a sign-up form in the mail from the same office or through the USDA, AMS website:

<http://www.ams.usda.gov/Cotton> and return it to their FSA office or return their signed request forms to USDA, Agricultural Marketing Service, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077-8249.

Eligible importers would be provided the opportunity to sign up to request a continuance referendum by downloading a form from the AMS website, or request a sign-up form by contacting [CottonRP@usda.gov](mailto:CottonRP@usda.gov) or (540) 361-2726, and return their signed request forms to USDA, Agricultural Marketing Service, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077-8249.

Such request must be accompanied by a copy of the U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment (also known as the “cotton fee”) for calendar year 2020. Requests and supporting documentation should be mailed to USDA, AMS, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077-8249.

The sign-up period will be from June 21, 2021, until July 2, 2021. Producer and importer forms shall only be counted if received by USDA before July 2, 2021.

Section 8(c)(2) of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent (i.e., 4,622) or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the Agricultural Marketing Service’s (AMS) Cotton and Tobacco Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent or 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum, a referendum will be held.

This direct final rule amends the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results, and instructions and forms.

In §§ 1205.20, 1205.26, and 1205.27, references to “calendar year 2014” are revised to read “calendar year 2020.” Also, in § 1205.26, eligible persons are further

defined to ensure that all producers that planted cotton during 2020 will be eligible to participate in the sign-up period, and in § 1205.26(2), the rule updates and reflects the elimination of the \$2.00 per line item importer de minimis (81 FR 38893; June 15, 2016) and that any importer of cotton and cotton-containing products during the representative period may participate. In §§ 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated.

A 30-day comment period is determined to be appropriate because these eligibility and participation requirements are substantially the same as the eligibility and participation requirements that were used in previous referenda and sign-up periods; participation is voluntary; and this rule, if adopted, should be made effective as soon as possible in order to conduct the sign-up at the earliest possible dates.

## **B. Regulatory Analyses**

### **Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

## **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the Secretary's ruling.

## **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR 121.201, small agricultural producers as those having annual receipts of no more than \$1,000,000, and small "Other Farm Product Raw Material Merchant Wholesalers" (cotton merchants/importers) as having no more than 100 employees. The Cotton Board estimates 12,000 producers and 40,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. According to the United States Census Bureau's "2016 Survey of SUSB Annual Data Tables by Establishment Industry," most importers are considered

small entities as defined by the SBA. The majority of these producers and importers are small businesses under the criteria established by the SBA.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

This rule is voluntary and only affects producers and importers wishing to participate in the sign-up under the Cotton Research and Promotion Order. Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This rule provides those persons who are not in favor of the continuance of the Order amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum and previous sign-up periods. In the most recent sign-up in 2015, USDA announced its determination not to conduct a continuance referendum because it received only 46 requests, an insufficient number of signatures to hold another referendum (80 FR 76654; December 10, 2015).

The amendments in this action update various dates, name changes, and addresses, and make other miscellaneous administrative changes.

The sign-up procedures do not impose a substantial burden or have a significant impact on persons subject to the Order because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

#### **Paperwork Reduction Act**

The information collections in this rule will be carried out under the OMB Control Number 0581-0093. This rule does not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581-0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in § 1205.541 of the regulations.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations herein.

### **List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, AMS amends 7 CFR part 1205 as follows:

### **PART 1205-COTTON RESEARCH AND PROMOTION**

1. The authority citation for part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101-2118; 7 U.S.C 7401.

2. Section 1205.20 is revised to read as follows:

#### **§ 1205.20 Representative period.**

The term *representative period* means the 2020 calendar year.

3. In § 1205.26, paragraphs (a)(1) and (2) are revised to read as follows:

#### **§ 1205.26 Eligibility.**

\* \* \* \* \*

(a) \* \* \*

(1) Any person who was engaged in the production of Upland cotton during calendar year 2020; and

(2) Any person who was an importer of Upland cotton during calendar year 2020.

\* \* \* \* \*

4. Section 1205.27 is revised to read as follows:



## **§ 1205.27 Participation in the sign-up period.**

The sign-up period will be from June 21, 2021, until July 2, 2021. Those persons who favor the conduct of a continuance referendum and who wish to request that Department of Agriculture (USDA) conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by July 2, 2021.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and AMS shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, Agricultural Marketing Service (AMS) will post sign-up information, including sign-up forms, on its website:

<http://www.ams.usda.gov/Cotton>. Importers who favor the conduct of a continuance referendum can download a form from the website, or request a sign-up form by contacting [CottonRP@usda.gov](mailto:CottonRP@usda.gov) or (540) 361-2726 and one will be provided to them. Importers may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2020. The USDA, AMS, Cotton and Tobacco Program, Attention: Cotton Sign-Up, P.O. Box 23181, Washington, DC 20077-8249 shall be considered the polling place for all cotton importers. All requests and supporting documents must be received by July 2, 2021.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the "County FSA Office Sign-up Sheet." A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA-578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the

FSA-578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note "ineligible" in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by July 2, 2021.

7. In § 1205.28, the first sentence is revised to read as follows:

**§ 1205.28 Counting.**

County FSA offices and FSA, Deputy Administrator for Field Operations (DAFO), shall begin counting requests no later than July 2, 2021. \* \* \*

8. Section 1205.29 is revised to read as follows:

**§ 1205.29 Reporting results.**

(a) Each county FSA office shall prepare and transmit to the state FSA office, by

July 12, 2021, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAFO shall prepare, by July 12, 2021, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by July 12, 2021, forward all county reports to DAFO. By July 19, 2021, DAFO shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406.

Bruce Summers, Administrator,  
Agricultural Marketing Service.

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